



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

OFFICE OF THE
REGIONAL ADMINISTRATOR

October 9, 2001

David Tilton
U.S. Fish and Wildlife Service
Lake Champlain Fish and Wildlife Resources Office
11 Lincoln Street
Essex Junction, VT 05452

Re: Final Supplemental Environmental Impact Statement for a Long Term Program of Sea Lamprey Control in Lake Champlain, EPA ERC Number SFW-B82009-00

Dear Mr. Tilton:

Thank you for the opportunity to comment on the Final Supplemental Environmental Impact Statement (FSEIS) for "A Long-term Program of Sea Lamprey Control in Lake Champlain" prepared by the Lake Champlain Fish and Wildlife Management Cooperative (Cooperative). The Cooperative consists of the U.S. Fish and Wildlife Service (FWS), the Vermont Department of Fish and Wildlife, and the New York State Department of Environmental Conservation. We appreciate being able to comment on long term sea lamprey control alternatives within Lake Champlain in Vermont, New York, and potentially in the Canadian Province of Quebec. We submit the following comments, in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, to be considered before your agency issues its Record of Decision.

Based on our review of the FSEIS, we believe a number of our comments on the Draft Supplemental Environmental Impact Statement (DSEIS), have been addressed, either fully or in part. While we appreciate this accommodation of our concerns regarding the proposed sea lamprey control program, we note that a number of our previous comments have not been adequately addressed. This letter outlines our remaining concerns, provides a summary of new concerns raised by revisions to the project and the EIS, and suggests how the balance of the NEPA process should proceed.

According to the FSEIS, the goal of the program is "to achieve fish population, recreational fishery and economic benefits associated with reduced sea lamprey predation." The FSEIS considers three alternatives: 1) an extensive, long-term control program for sea lamprey that is tributary specific, screens viable control techniques for use in each stream system and allows for integrated methods to achieve project objectives (the proposed action); 2) continued treatment of the rivers and deltas treated during the eight-year experimental program with chemical lampricides (no additional control techniques or new treatment areas would be added to improve

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sea lamprey control); and 3) abandonment of sea lamprey control as a fisheries management tool (the no action alternative). Based on our review of the FSEIS, we believe that there are data deficiencies in the FSEIS that must be addressed before the conclusion of the NEPA process and in advance of the selection of a final course of action. Without this information it may be difficult for the FWS to make an informed decision about the project due to a lack of information about project impacts. In general, the concerns we raised about the project in our comments on the DEIS remain largely the same. We continue to believe that the final sea lamprey control strategy for Lake Champlain must be effective, flexible and location specific, while minimizing collateral damage to the ecosystem of the lake and its tributaries. In our view, the development of a comprehensive public process that allows for changes to the treatment program based on its effectiveness and impacts to non-target species, and that integrates the concerns of numerous stakeholders into decision-making is equally important. Our specific comments are provided below.

Previous Comments Fully Addressed

We appreciate your thoughtful response to our comments on the DEIS on the following issues:

- Revision and revisitation strategy;
- Chemical fate of lampricide;
- Chemical Reduction bill;
- Historic Preservation Act;
- Lampricide tolerance;
- Long-term impacts-- lampricides and barrier dams;
- Ecological information regarding barrier dams;
- Information on how optimal wounding rates are established.

Previous Comments Not Fully Addressed

Project Purpose and Need

The FSEIS acknowledges that non-target species impacts are addressed in the screening process and in sections of the analysis regarding environmental consequences of implementing the selected alternative. While we believe this is a good start, we maintain that the goals for the program, as expressed through the project purpose and need statement, should explicitly include minimization of impacts to non-target organisms in the lake and its tributaries. This will help to focus the alternatives selection process on a sea lamprey control program that effectively minimizes collateral damage.

NEPA Action for New Treatment Areas

The response to comment #9 notwithstanding, this comment has not been addressed in any substantive fashion, and the text in section VIII-B has not been modified from the DSEIS to the

FSEIS. We still believe that the eleven new streams, described in section VIII-A, that were not treated in the experimental program and slated for lampricide application should not be treated until the impacts associated with these activities are shown to be acceptable. Some of the information that ought to be provided to help inform that decision includes sea lamprey transformer estimates, wetland impact analyses, non-target species potential impacts, and water supply studies. Once this information is obtained and a draft plan developed it should be made available to the public through a supplemental NEPA process that precedes any final decision-making.

Poultney River

The FSEIS indicates that treatment of the Poultney will be delayed for five years following implementation of the program (anticipated for fall 2001). While we appreciate the Cooperative's decision to delay treatment in the Poultney river by an additional year to allow time to assess the relative success of the program through wounding data, we believe the suggested time frame may still be too limited to determine whether or not the program is successful and we suggest that the FWS seriously consider the input of the Nature Conservancy and the Lake Champlain Committee, among others, on this issue. More importantly, the proposed plan does not include any specific commitment by the FWS to determine whether or not the Poultney actually contributes lamprey to Lake Champlain and whether or not these lamprey move into the main body of the lake. We are encouraged by the commitment in the FSEIS to use treatment concentrations of lampricides at levels less than or equal to levels shown not to cause mortality to state-listed threatened and endangered aquatic species.

Zebra Mussels

We appreciate your response to our comments regarding the potential for zebra mussels in Lake Bomoseen to migrate downstream into the Poultney River and to serve as an additional stressor, in combination with lampricide treatments, on native mussels, including state endangered species. However, the response did not fully discuss the cumulative impacts of lampricide treatment if zebra mussels become established in the Poultney. For example, is it known for certain that the No Observable Effect concentration for a mussel would not change downward when zebra mussels are competing with it for food and have colonized their shells? This issue, among others, should be more fully addressed before finalizing the Record of Decision.

Pesticide Registration and Use:

We understand the process of obtaining all necessary permits and clearance from the Vermont Department of Agriculture, Food, and Markets (VDAFM) is underway, but not complete. We hope that the Cooperative will fully address VDAFM's concerns before issuing a Record of Decision.

Screening and feedback mechanism

Due to the positive changes made by the Cooperative to the revision and revisitation strategy, and by an expanded discussion of how the wounding rate targets were chosen, our concern about this category has been reduced, but not eliminated. Before the Record of Decision for this project is finalized, the Cooperative should provide additional details on how tributaries are selected as the highest priority for treatment, and how this priority ranking might vary over time as the wounding rate and other program parameters change. The discussion should specifically describe what types of feedback would lead to an increase or decrease in control measures.

New Issue

Dioxin Contamination of TFM

We found the addition of Appendix F on the characteristics and fate of the lampricides to be very helpful. Page F-15 contains a paragraph entitled "Formulation Impurities" that describes work done by Hewitt *et al* to document contamination of TFM by a form of dioxin. We believe that this section is useful, but falls short of what is needed to inform regulatory agencies and the public about the risks from this contamination. At a minimum, the concentration of the contaminant should be described, along with an estimate of annual TFM usage for the lamprey control program, so that an idea of the loading rates to the basin can be conveyed. Information about the ecological and human toxicity of chloro-nitro-trifluoromethyl substituted dioxins, and its human carcinogenic potential, should be provided. Such a discussion should include information about how this compound fits into the large family of dioxin compounds, and how its toxicity and carcinogenicity relate to the reference dioxin, 2,3,7,8-tetrachlorodibenzo-p-dioxin or TCDD. The ecological implications of mixed function oxidase (MFO) enzyme response from exposure to the TFM contaminates should be clearly explained to the public. It should also describe in more detail and, if possible, confirm from other sources, the assertions of Hewitt *et al* that chloro-nitro-trifluoromethyl substituted dioxins are rapidly excreted by aquatic organisms and are subject to photochemical degradation. The Cooperative should commission a study of more recent formulations of TFM, as the journal article tested batches manufactured up to 1995 to assess the impact of current and future applications of TFM. To ensure that TFM contaminants are not building up in the environment, the Cooperative should commit to performing a comprehensive study of fish tissue in Lake Champlain and tributaries after a few years of lampricide treatment.

Update on NPDES Permit Issue

As we described in our May, 2001 letter, a permit under the Clean Water Act (CWA) may be required prior to lampricide application as a result of a recent decision of the Ninth Circuit Court of Appeals in the case of *Headwaters, Inc. v. Talent Irrigation District*. In that case, the Court held that a National Pollutant Discharge Elimination System (NPDES) permit was required for the direct application of an aquatic herbicide to water because the residual herbicide in the water following the application was found to be a pollutant subject to regulation under the CWA. The

scope of this decision would appear to include application of lampricides to Lake Champlain tributary waters. EPA has not, however, yet made a final decision on how best to implement the CWA in combination with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) with respect to the direct application of pesticides to waters of the United States. While the court indicated that an NPDES permit was required for these activities, EPA has not yet established national policy specifying how the CWA might apply to the use of aquatic herbicides. Our agency is working to identify a long term response to the court's decision. We also recognize that apart from the federal CWA issue, the State of Vermont currently has certain legal requirements that apply to the use of lampricides in state waters. While we plan to continue consulting with the many stakeholders outside the Agency who have thoughts or concerns about how we should proceed, we remind the FWS that it would be prudent to stay in close contact with our agency on this issue.

Conclusion

EPA shares with the Fish and Wildlife Service and many other parties an interest in the long-term health and vitality of Lake Champlain, and we submit these comments in the spirit of that shared interest. We look forward to reviewing a response to our comments and those of other parties prior to the close of the NEPA process. Please feel free to contact me or Timothy Timmermann of EPA's Office of Environmental Review at 617-918-1025 if you wish to discuss these comments.

Sincerely,

Robert W. Varney
Regional Administrator

cc:

Bill Howland, LCBP

Canute Dalmasse, VT ANR

Stu Buchanan, NY DEC

Jean Rivet, Ministère de l' Environnement, Direction Régionale de la Montérégie

Gerald Potamis, EPA New England

EPA, Office of Federal Activities

Theresa Faber, EPA Region 2